

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 911 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No

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STATE OF GUJARAT

Versus

BERABHAI RAMANBHAI BARIA

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Appearance:

MR DN PATEL, APP for Petitioner

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision:16-10-1998

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

The State has preferred this appeal being aggrieved with the order of acquittal recorded by the learned Special Judge in Sessions Case (Atrocity) No.59 of 1994 on 10-4-1997. The respondent-accused was tried for the offences punishable under Secs.323 and 504 of Indian Penal Code, Sec.3(1)(10) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act and also Sec.135 of Bombay Police Act.

2. It is the case of the prosecution that on

29-10-1992 at about 8 p.m. the complainant had exchange of words with the accused regarding the theft of sheaf from his field. On this, accused became angry and with an intention to insult the complainant in public, uttered abuses about complainant's caste and thereafter, inflicted a stick blow on him and so, complainant was injured on his left hand finger. A complaint was lodged at Kalol Police Station on 30-10-1992. After registering the complaint, PSO started the investigation, recorded statements of various witnesses, collected medical evidence for the injury caused to complainant, drawn panchnama of scene of offence and recovered the stick, which is alleged to have been used in the commission of offence. After completing the investigation, Police filed the charge-sheet in the Court. Charge was framed against the accused and accused pleaded not guilty to the charge and claimed to be tried. The learned Special Judge, on appreciation of evidence, acquitted the accused against which, the present appeal is preferred.

3. We heard learned Addl. Public Prosecutor who argued that learned Special Judge ought to have believed the oral evidence of the injured-complainant, Dr.J.J.Mehta and Dr.Ritesh Champaneria and ought to have convicted the accused.

4. We have gone through the oral evidence of complainant, Dr.J.J.Mehta and Dr.Ritesh Champaneria. It appears from the evidence of complainant that there is a public road very near to his field and also there is a Police Station in between his house and field and incident took place in the evening at about 5.30 p.m. or 6 p.m.. As it was winter, there was darkness. He admitted that he cannot see properly a person if he is at a distance of one foot away. But his evidence is that he saw the accused for the first time when he was at a distance of 25 feet. So, admittedly, this witness must not have identified the accused at the relevant time. It is admitted by the complainant that due to injury received by him, he became unconscious and when he regained consciousness, he went home. He admitted in his cross-examination that he filed the complaint against the accused on the basis of suspicion. Therefore, it is clear that his evidence is not believable.

5. Dr.J.J.Mehta, who examined the complainant on 31-10-1992, stated in his cross-examination that the injury received by the complainant was more than 48 hours old and there was infection on the said injury. Dr.Ritesh Champaneria categorically deposed that above injury is possible by falling down on the earth and it

was ordinary in nature.

6. After going through the evidence of the above witnesses, we are of the view that prosecution failed to establish as to who caused injury to the complainant and when he sustained the said injury. We are in agreement with the view taken by the learned Special Judge.

7. We have gone through the evidence which was suggested to be read by learned Addl. Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

8. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9. Based on the above two observations and looking to the facts and circumstances of the case, we are not interfering with the order of acquittal recorded by the learned Special Judge in Sessions Case (Atrocity) No.59 of 1994 on 10-4-1997. Appeal, therefore, stands rejected.

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